THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.23835 OF 1999
AND
WRIT PETITION NO.8168 OF 2006

DATED: 11th DECEMBER, 2006.

In W.P.No.23835 of 1999 :

Between :

1. Smt. Jeelani Begum and 3 others. ... Petitioners

And

1. Union of India, rep. by its Custodian of Enemy Property for India, Kaiser-i-Hindu Building Ballard Estate, Mumbai – 400 038 and Others. ... Respondents

In W.P.No.8168 of 2006 :

Between :

1. Khaja Zuhuruddin and 2 others. ... Petitioners

And

1. Union of India, rep. by its Custodian of Enemy Property for India, Kaiser-i-Hindu Building Ballard Estate, Mumbai – 400 038 and Others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.23835 OF 1999
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COMMON ORDER :

These two writ petitions, which are based on the same set of facts, are heard together and decided by this common order.

The facts, in brief, are as under :

The Petitioners 2 to 4 are the sons of the 1st petitioner by name Jeelani Begum. It is claimed that the agricultural land situated in Sy.Nos.20 and 28 of Miyapur village, Serilingampalli Mandal, Rangareddy District, admeasuring Ac.250-00 and Ac.384-00 respectively, were owned by Smt. Jeelani Begum. In the proceedings initiated under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1962, the Land Reforms Tribunal, Hyderabad, West Division vide order dated 4-1-1978 determined the excess land as 5.8135 standard holdings, as on 1-1-1975. In the meanwhile, Smt. Jeelani Begum migrated to Pakistan on 21-6-1977. The sons of Smt. Jeelani Begum, petitioners 2 to 4 herein, remained in India. In the year 1980, Smt. Jeelani Begum went to USA from Pakistan and obtained the citizenship of USA and she was residing at USA till her death.

Thus, the petitioners claim that Smt. Jeelani Begum ceased to be a citizen of Pakistan from December, 1980 onwards. However, on the ground that Smt. Jeelani begum had migrated to Pakistan and she was holding Pakistan Passport till 26.9.1979, the entire land in the name of Smt. Jeelani Begum was declared as Enemy Property under the Enemy Property Act, 1968 (for short, 'the Act'). The petitioners came to know about the said fact in January, 1984 when they proposed to sell the land in Sy.Nos.20 & 28. In the circumstances, the petitioners made an application dated 2-2-1984 before the 1st respondent to issue NOC to dispose of their property. The 1st

respondent by letter dated 24-3-1988 rejected the request of the petitioners. Aggrieved by the same, the petitioners filed W.P.No.6662 of 1988, which was disposed of by this Court by order dated 4.9.1998, granting liberty to the petitioners to approach the Central Government for necessary relief, on the ground that under Section 18 of the Act the Central Government alone is competent to pass an order divesting the enemy property vested in the Custodian.

Pursuant thereto, the petitioners made a representation before the Union of India requesting to release the property in Sy.No.28 of Miyapur village from the Custodian of the Enemy Property (1st respondent herein). The said request was rejected by order dated 28.1.1999, which was communicated to the petitioners vide proceedings of the 3rd respondent dated 31.5.1999. The order dated 28.1.1999 runs as under :

> *"Sir,*
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> *I am directed to refer to your letter No.B/20377/FA/JAG, dated 29th December, 1998 on the above mentioned subject and to inform you that the land in Sy.No.28 of Miyapur Village, Serilingampally Mandal, cannot be divested under Section 18 of the Enemy Property Act, 1968 as the property is enemy property."*

The above order as well as the order of the Custodian dated 24-3-1988 are under challenge in W.P.No.23835 of 1999. This Court while directing notice to the respondents passed interim order dated 17-11-1999 as under :

> *"Pending further orders on their application, the 4th respondent is directed not to alienate the property in Sy.Nos.20 and 28 of Miyapur Village, Serilingampally Mandal, Rangareddy District admeasuring 250 and 384 acres respectively."*

Pending the above writ petition, the 1st respondent passed orders dated 10.1.2006 under Section 8 of the Enemy Property Act, 1968, allotting the land in question to the respondents 5 to 18 herein,

subject to terms and conditions mentioned thereunder.

The said action of the 1st respondent is questioned in W.P.No.8168 of 2006, seeking a Writ of Certiorari calling for the record relating to the proceedings dated 10.1.2006 and quash the same, contending inter alia that the said orders which are in violation of the interim order passed in W.P.No.23835 of 1999 are liable to be set aside on that ground alone.

I have heard the learned Counsel for both the parties and perused the material on record.

Sri P. Venugopal, the learned Counsel for the petitioners contended that the order dated 28-1-1999 which is under challenge in W.P.No.23835 of 1999 is arbitrary and illegal being contrary to the provisions of the Enemy Property Act, 1968 (for short, 'the Act').

While relying upon the decision of the Supreme Court in UNION OF INDIA v. RAJA MOHD. AMIR MOHD. KHAN[1] the learned Counsel contended that even assuming that the property in question was vested with the 1st respondent - custodian on migration of Smt. Jeelani Begum to Pakistan, the petitioners 2 to 4 who are the successors of Smt. Jeelani Begum are not divested of their right, title and interest in the property since the vesting in the custodian is limited to the extent of management over the property temporarily.

In the counter-affidavit filed on behalf of the respondents 1 and 2, it is stated that Smt. Jeelani Begum had applied for Pakistan citizenship on 2-4-1976 and she had acquired Pakistani Passport on 29-6-1977. The plea of the petitioners that Smt. Jeelani Begum ceased to be Pakistani National in December, 1980 on account of her acquisition of Citizenship of USA has been denied and it is contended that the property of a person who has acquired citizenship of Pakistan i.e., the enemy country during the period from 10-9-1965 to 26-9-1977 would be the enemy property. Since Smt. Jeelani Begum acquired the citizenship of Pakistan during the said period, in spite of

the alleged acquisition of citizenship of USA subsequently the properties left by her in India continue to vest in the Custodian. Hence, the order dated 24-3-1988 passed by the Custodian rejecting the request of the petitioners to issue NOC to dispose of the land in question was in accordance with law. This Court while disposing of W.P.No.6662 of 1998 did not express any opinion as to the rights of the petitioners, but directed the Central Government to consider the claim of the petitioners and pass appropriate orders. Accordingly, having considered the petitioner's claim, the order dated 28-1-1999 was rightly passed rejecting the claim of the petitioners since the property in question being enemy property cannot be divested under Section 18 of the Act.

The respondents in W.P.No.8168 of 2006 filed counter-affidavits contending that the impugned orders allotting the land in question in their favour in exercise of powers under Section 8 of the Act cannot be held to be arbitrary or illegal.

It is to be noted that the Enemy Property Act, 1968 has been enacted to provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 and for matters connected therewith. The effect of the Act was that all immovable property in India belonging to Pakistani Nationals stood vested in the Custodian of Enemy Property in India with immediate effect.

Section 2 (c) defined enemy property and the word 'enemy' has been defined under Section 2 (b) of the Act. Section 6 of the Act provides for declaring the transfer of property by an enemy subject which is vested in the Custodian to be void by the Central Government after giving reasonable opportunity of being heard to the transferee. Section 8 of the Act deals with power of the Custodian in respect of the enemy property vested in him. Section 9 of the Act provides that all enemy property vested in the Custodian shall be exempted from attachment, seizure or sale in execution of a Civil Court

or orders of any other authority. Section 13 makes provision for validity of action taken in pursuance of orders of Custodian. Section 18 deals with divesting of enemy property vested in the Custodian.

Having considered the scope and object of the above provisions of the Act in detail, the Supreme Court in RAJA MOHD. AMIR MOHD. KHAN'S (1 supra) held as under :

> *"A conjoint reading of Sections 6, 8 and 18 of the Act indicates that the enemy subject due to the vesting of his property in the Custodian is not divested of his right, title and interest in the property. The vesting in the Custodian is limited to the extent of possession, management and control over the property temporarily. This position was not disputed before us by the learned counsel appearing for the appellant. The object of the Enemy Property Act is to prevent a subject of an enemy State from carrying on business and trading in the property situated in India. It is, therefore, contemplated that temporary vesting of the property takes place in the Custodian so that the property till such time as it is enemy property cannot be used for such purpose."*
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> It was also held by the Supreme Court as under:
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> *"As indicated above, the vesting of the properties in the Custodian under the Enemy Property Act is limited to the extent of possession, management and control over the properties only. The right, title or interest of the owner is not taken away. After the ceasing of the property to be enemy property it ceased to be belonging to an enemy. The Custodian cannot be permitted to continue with the possession of such properties."*

In the light of the ratio laid down by the Supreme Court in RAJA MOHD. AMIR MOHD. KHAN'S (1 supra) it is clear that the vesting in the Custodian does not divest the right of the enemy and what was contemplated under the Act was only temporary vesting in the Custodian which is limited to the extent of possession, management and control over the enemy property temporarily. Section 18 of the Act provides for divesting the Custodian of such property. The Central Government is empowered to make such order

under Section 18. Hence it is necessary for the Central Government to exercise its discretion in the facts and circumstances of a given case and arrive at a conclusion whether the enemy property vested in the Custodian shall be divested from him and retuned to the owner.

In the case on hand, it is apparent that the 1st respondent had failed to exercise such discretion conferred under Section 18 of the Act. The impugned order is not only cryptic but also without application of mind to any of the relevant factors. The only reason assigned in the impugned order that the property being the enemy property cannot be divested under Section 18 of the Act is contrary to the scope and object of Section 18 read with the other provisions of the Act as explained by the Supreme Court in RAJA MOHD. AMIR MOHD. KHAN'S case (1 supra).

Hence, the impugned order is liable to be set aside on that ground alone.

Accor dingly, the order of the 3rd respondent which is impugned in W.P.No.23835 of 1999 dated 28-1-1999 communicated by letter dated 31-5-1999 is hereby set aside and the 3rd respondent is directed to consider the representation of the petitioners afresh and pass appropriate orders in accordance with law in terms of the decision of the Supreme Court in RAJA MOHD. AMIR MOHD. KHAN'S case (1 supra) as expeditiously as possible preferably within a period of 3 months from the date of receipt of this order after affording due opportunity to the petitioners to substantiate their right, title and interest in respect of the property in question.

The orders of assignment dated 10-1-2006 which are under challenge in W.P.No.8168 of 2006 being consequential orders, shall also stand set aside.

Accordingly, both the Writ Petitions are disposed of. No costs.

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G. ROHINI, J.

Dt. 11-12-2006

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[1] (2005) 8 Supreme Court Cases 696